

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE APPLICATION OF WILLOW CREEK)
UTILITIES, INC., D/B/A WILLOW)
CREEK SEWER SYSTEM FOR AN ADJUST-) CASE NO. 9099
MENT OF RATES PURSUANT TO THE)
ALTERNATIVE RATE ADJUSTMENT PRO-))
CEDURE FOR SMALL UTILITIES)

O R D E R

On February 22, 1985, the Commission issued an Order in this proceeding wherein it denied a proposed increase by Willow Creek Utilities, Inc., d/b/a Willow Creek Sewer System ("Willow Creek"). On March 15, 1985, Willow Creek filed a petition for rehearing on three of the issues discussed in the Commission's Order.

The first issue raised by Willow Creek involved its contract plant operating fee or routine maintenance fee. Willow Creek reported a test-period routine monthly maintenance fee of \$550. No adjustment was proposed by Willow Creek. In Willow Creek's last rate Order of February 11, 1981, the Commission allowed a monthly fee of \$425. Since Mr. Cogan owns both Willow Creek and the vendor performing the routine maintenance service, Andriot-Davidson Company, Inc., ("Andriot-Davidson") the transaction is at less than arms-length. In the course of this proceeding, information was requested to assist in the determination

of whether the proposed fee is fair, just and reasonable. However, Willow Creek's responses to these requests were incomplete and Willow Creek failed to offer any additional evidence that the routine maintenance fee is reasonable.

The Commission maintains its position that transactions between affiliated companies cannot be accepted without substantive evidence that the services rendered are adequate and the price for those services is reasonable. The Commission has expressed this position in numerous Orders involving sewer utilities owned by Mr. Cogan, and has denied adjustments to increase the routine maintenance fee because the evidence did not support a finding that the affiliated company transactions are reasonable. The Commission in this instance will allow Willow Creek a hearing on this issue since this case was filed under the alternative rate adjustment procedure for small utilities ("ARF") and no hearing was conducted in the original proceedings. However, the Commission hereby notifies Willow Creek that it will not alter its position on the affiliated company transactions with mere discussions of general business practices in the sewage industry. The Commission emphasizes that it will not accept the type of evidence offered on this issue in the past. More specifically, in order to meet its burden of proof on this issue, Willow Creek must show, through verifiable and documented evidence, that:

(1) The level of service received by Willow Creek from Andriot-Davidson is comparable to the level of service provided by Andriot-Davidson to non-affiliated companies.

(2) The contract of Willow Creek for routine maintenance is comparable to the contracts of Andriot-Davidson with non-affiliated companies and the prices for routine maintenance to affiliated and non-affiliated companies are comparable for comparable contracts.

(3) The determination of the cost of materials and services provided to Willow Creek is comparable to the determination of the cost of materials and services to non-affiliated companies.

(4) The return to Andriot-Davidson for materials and services provided to Willow Creek is comparable to the return received for materials and services provided to non-affiliated companies.

(5) The rate of return of Andriot-Davidson on materials and services provided to Willow Creek is reasonable in comparison with the returns of similar sewage treatment plant service companies or other related businesses.

(6) There is no subsidization among affiliated companies or non-affiliated and affiliated companies through the pricing mechanisms used by Andriot-Davidson to determine the costs of materials and services.

(7) The prices paid for materials and services are at market prices or below based on bids from non-affiliated vendors with complete details of the materials or services offered by non-affiliated vendors and evidence that the bids are for comparable materials and services.

(8) No economically viable alternative to the acquisition of materials and services from affiliated companies exists.

(9) Without the benefit of some independent control over materials and services acquired from affiliated companies, the customers of the utility are afforded service at the lowest possible cost.

For the purposes of this proceeding, the Commission will not consider evidence presented in other cases involving utilities owned by Carroll Cogan on this issue, and expects Willow Creek to present its case with the knowledge that, to this date, its evidence on this issue has been unacceptable. If Willow Creek chooses to submit evidence it considers to be confidential, the Commission has a procedure whereby such information can be given such treatment and still be a part of the record in this case.

The second issue raised by Willow Creek concerned the Commission's decision to disallow the test-year interest expense of \$2,319. This amount represents interest charges on the \$27,500 used to finance the purchase of Willow Creek from Pence Mortgage Company. The Commission disallowed this expense because the debt is merely a result of the transfer of ownership of the treatment plant and resulted in no benefits to the ratepayers. Although Willow Creek presented no new information on this issue, the Commission will allow a hearing to be held on this issue since this case was filed under the ARF procedure.

The third issue raised by Willow Creek involved the disallowance of \$2,750 of test-year depreciation expense. This amount represents the purchase price of the utility allocated to plant accounts and depreciated over 10 years. As the Uniform System of Accounts for Class D sewer utilities makes no provision for such

treatment of the purchase price, the depreciation was disallowed; however, the Commission will allow a hearing to be held on this issue for the reasons stated in the preceding paragraph.

Willow Creek also requested that it be provided a copy of the Commission's calculation of \$11,048 as the adjusted test-year electricity expense. The Commission, by letter, will provide Willow Creek an explanation of how this amount was calculated within 2 weeks of the date of this Order.

Willow Creek should be given 30 days in which to file testimony and present other proof on the issues involved in this petition.

SUMMARY

Based on the issues presented in the petition for rehearing and the evidence of record and being advised, the Commission is of the opinion and finds that a hearing should be granted for the purpose of reconsideration of all issues raised by Willow Creek in its petition.

IT IS THEREFORE ORDERED that Willow Creek is granted rehearing on all issues raised by its petition and that Willow Creek shall file testimony and additional proof on all issues within 30 days from the date of this Order.

IT IS FURTHER ORDERED that this case be and it hereby is scheduled for hearing in the Commission's offices, Frankfort, Kentucky, on the 15th day of May, 1985, at 1:30 p.m., Eastern Daylight Time.

IT IS FURTHER ORDERED that Willow Creek shall give notice of the hearing in accordance with the provisions of 807 KAR 5:011, Section 8.

Done at Frankfort, Kentucky, this 4th day of April, 1985.

PUBLIC SERVICE COMMISSION

Richard D. Demaree
Chairman

R. L. Dyer
Vice Chairman

Sam Shull
Commissioner

ATTEST:

Secretary